

No. 14,551

IN THE

United States Court of Appeals
For the Ninth Circuit

JAMES J. BENNETT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal from the District Court of the United States
for the District of Alaska, Fourth Judicial Division.

REPLY BRIEF OF APPELLANT.

GEORGE B. GRIGSBY,

Box 799, Anchorage, Alaska,

Attorney for Appellant.

FILED

APR 18 1956

PAUL P. O'BRIEN, CLERK

Subject Index

	Page
Argument	1
Conclusion	5

Table of Authorities Cited

	Pages
Alpin v. U. S., 41 F. 2d 495	4
Craig v. U. S., 81 F. 2d 816	2
DiCarlo v. U. S., 6 F. 2d 364	1
Dodson v. U. S., 215 F. 2d 196	4
Hart v. U. S., 11 F. 2d 499	2
Kelly v. U. S., 297 Fed. 212	3
Kuhn v. U. S., 24 F. 2d 910	5
Lawrence v. U. S., 162 F. 2d 156	4
Mallory v. U. S., 126 F. 2d 192	3
Mellor v. U. S., 160 F. 2d 757	2
Mortensen v. U. S., 322 U.S. 369	2, 4
Schrader v. U. S., 94 F. 2d 926	2
Shama v. U. S., 94 F. 2d 1	4
Tedesco v. U. S., 118 F. 2d 737	4
U. S. v. Block et al., 88 F. 2d 618	5
Wright v. U. S., 175 F. 2d 384	2

No. 14,551

IN THE

**United States Court of Appeals
For the Ninth Circuit**

JAMES J. BENNETT,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

**On Appeal from the District Court of the United States
for the District of Alaska, Fourth Judicial Division.**

REPLY BRIEF OF APPELLANT.

ARGUMENT.

Throughout appellee's brief numerous cases are cited in support of legal principles asserted by appellee.

In general appellant concedes the legal principles and that the authorities cited support them. They serve, however, only to confuse the issues here.

DiCarlo v. U. S., 6 F. 2d 364, is cited on page 5 of appellee's brief.

In that case the veracity of a government witness was impugned because of an apparent motive to fabricate. The prosecution was permitted to prove that

the witness made statements, consistent with his testimony, before the motive arose. The case has no application here.

Craig v. U. S., 81 F. 2d 816, 828, is cited on page 6 of appellee's brief. It is not in point because Marilyn Casey's testimony at the trial, "viewed in conjunction with the testimony of other witnesses", did not contribute to the government's case. She testified to no material fact in dispute.

Wright v. U. S., 175 F. 2d 384, 387, and *Schrader v. U. S.*, 94 F. 2d 926, are cited on page 8 of appellee's brief in support of the principle that one who aids and abets in transportation for the purpose of prostitution is guilty under the Act. The principle of law has long been well established.

Mellor v. U. S., 160 F. 2d 757, 764, and *Hart v. U. S.*, 11 F. 2d 499, 501, are cited on page 8 of appellee's brief, in support of the proposition that the fact that Bennett and Kehert were not with Casey when they passed through the points of immigration inspection, is immaterial.

This proposition is conceded. No question was raised in appellant's brief in this regard.

Mortensen v. U. S., 322 U.S. 369, is cited on page 8 of appellee's brief.

Immediately preceding this citation the brief states,

"Casey testified that she wanted a vacation and she suggested the trip. If there was evidence to support the vacation theory, and the government had not rebutted such a contention, Appellee would confess error on the basis of the *Mortensen* case, 322 U.S. 369 (1944). However, the jury had

ample evidence to show that Bennett's purpose was to get all of the girls to Alaska so they could ply their trade (Mellor v. U. S., supra, 764), and it was the purpose of Bennett and Kehert that the jury were considering, not Casey's."

There was no substantial evidence adduced at the trial that Bennett's purpose was to get all of his girls to Alaska so they could ply their trade.

In making the above statement the United States attorney must have had in mind the testimony of C. M. Wright to the effect that on May 18, 1953 Jack Bennett told him that he was going to take his girls back up to Anchorage and how much money he could make up there through the girls he would take up there. (T.R. pp. 307-309.)

Wright's testimony against Bennett consisted solely of alleged admissions made by Bennett to him as to various illegal activities of Bennett in Texas, relating to narcotics and prostitution, all in an attempt to portray Bennett as a man of bad character. He was not discouraged in this attempt by the United States attorney, but persisted in this conduct in spite of frequent admonitions of the trial court to desist therefrom, thus revealing his personal animosity toward Bennett.

Mallory v. U. S., 126 F. 2d 192, 193, and *Kelly v. U. S.*, 297 Fed. 212, 213, are cited on page 8 of appellee's brief.

In the cases cited the appellate court held that the testimony amply supported the verdict of guilty. Judging from the review of the testimony in the

Court's opinions in these cases, it is apparent that the Court's conclusion was justified.

Shama v. U. S., 94 F. 2d 1, 4, and *Alpin v. U. S.*, 41 F. 2d 495, 496, are cited on page 9 of appellee's brief. This appellant concedes that the law is well stated in these decisions and that the convictions were based upon sufficient evidence.

Dodson v. U. S., 215 F. 2d 196, 200, is cited on page 9 of appellee's brief.

In that case the incriminating statement of the defendant was made to the victims themselves. On the strength of that statement and other evidence in the case, the conviction was upheld.

Tedesco v. U. S., 118 F. 2d 737, 740, and *Lawrence v. U. S.*, 162 F. 2d 156, 158, are also cited on page 9 of appellee's brief.

These decisions related to the admissibility of evidence of other offenses to prove intent, motive and guilty knowledge, and clearly state the law applicable to the facts proven.

The appellant is indebted to the appellee for citing *Mortensen v. U. S.*, 322 U.S. 369. On page 374 of the opinion in that case it is stated,

“we would normally be precluded from reviewing or disturbing the inference of fact drawn from the evidence by the jury. But we have never hesitated to examine a record to determine whether there was any competent and substantial evidence fairly tending to support the verdict.”

An examination of the record in the present case will demonstrate to this Appellate Court that the

verdict in the *Bennett* case was not supported by competent and substantial evidence.

Appellee's brief, page 5, last paragraph, states:

"No attempt is here made * * * to take advantage of the prior contradictory statements of Marilyn Casey as affirmative evidence."

It is submitted that there was a palpable attempt to take such advantage; that the appellant was convicted on the prior *ex parte* statements of Marilyn Casey which were admitted as substantive evidence, an error which could not be cured and was not cured by the trial court's instructions.

CONCLUSION.

Appellee's brief ignores *U. S. v. Block et al.*, 88 F. 2d 618, cited on page 27 of appellant's brief, and *Kuhn v. United States*, 24 F. 2d 910, cited on page 28, both of which are exactly in point as shown in appellant's brief, pages 26-30.

The *Kuhn* case is erroneously cited as 24 P. 2d 910 instead of 24 F. 2d 910.

A review of these two cases will, in the opinion of counsel for appellant, result in a reversal of the judgment of the lower court.

Dated, Anchorage, Alaska,
April 16, 1956.

GEORGE B. GRIGSBY,
Attorney for Appellant.

